

# **EXHIBIT 1**

Amelia Huffman  
7/31/2012

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Case No. 11-CV-03071 (SRN/JJK)

Larry E. Smith, as trustee for  
the Heirs and Next of Kin of  
David Cornelius Smith,

Plaintiff,

vs.

Timothy Gorman and Timothy Callahan,  
acting in their individual capacities  
as Minneapolis police officers,  
and The City of Minneapolis,

Defendants.  
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VIDEOTAPED DEPOSITION TRANSCRIPT OF

AMELIA HUFFMAN

July 31, 2012

9:07 A.M.

at

Gaskins, Bennett, Birrell, Schupp, LLP  
333 South 7th Street  
Suite 2900  
Minneapolis, MN 55402

Court Reporter: Janet D. Winberg, RPR  
Videographer: Jayme Hogan, Envision

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<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 KATHRYN BENNETT, Attorney at Law kbennett@gaskinsbennett.com</p> <p>4 ROBERT BENNETT, Attorney at Law rbennett@gaskinsbennett.com</p> <p>5 JEFFREY S. STORMS, Attorney at Law jstorms@gaskinsbennett.com</p> <p>6 GASKINS, BENNETT, BIRRELL, SCHUPP, LLP 333 South 7th Street Suite 2900 Minneapolis, Minnesota 55402</p> <p>7 On Behalf of the Defendants:</p> <p>8 C. LYNNE FUNDINGSLAND, Assistant City Attorney c.lynn.fundingsland@ci.minneapolis.mn.us</p> <p>9 CITY OF MINNEAPOLIS-OFFICE OF CITY ATTORNEY 350 South Fifth Street City Hall, Room 210 Minneapolis, Minnesota 55415</p> <p>10 VIDEOGRAPHER:</p> <p>11 Jayme Hogan Envision jayme@envisionvideo-legal.com 612.998.6609</p> <p>12 NOTE:</p> <p>13 The original transcript will be delivered to the 14 noticing party, Gaskins, Bennett, Birrell &amp; Schupp.</p> <p>15 NOTE:</p> <p>16 Exhibit 92 was marked.</p>	2	<p>1 Frank, M-A-N.</p> <p>2 Q. And how old are you?</p> <p>3 A. I'm 40.</p> <p>4 Q. And you understand that you're testifying under 5 oath today?</p> <p>6 A. I do.</p> <p>7 Q. What documents did you review in preparation for 8 your deposition?</p> <p>9 A. The CAPRS Report from the police computer system 10 and the VisiNet Call Details.</p> <p>11 Q. And by the CAPRS Report, did you also read all 12 the supplements attached to the CAPRS Report?</p> <p>13 A. Yes, I did.</p> <p>14 Q. And you did not actually create a supplement 15 yourself in this case?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And why was it that you did not create a 18 supplement in this case?</p> <p>19 A. I wasn't an -- an investigator on the case, nor 20 did I go to the scene so I didn't have any 21 firsthand details to add to the CAPRS in the 22 form of a supplement.</p> <p>23 Q. Have you ever reviewed any of the videos related 24 to this case?</p> <p>25 A. I have at the time of the incident, but it's</p>	4
<p>1 PROCEEDINGS</p> <p>2 VIDEOGRAPHER: This is the video</p> <p>3 deposition of Amelia Huffman.</p> <p>4 The date is July 31, 2012.</p> <p>5 The time is 9:07 A.M.</p> <p>6 Would each attorney please state his or her</p> <p>7 name for the record?</p> <p>8 MR. STORMS: Jeff Storms, Robert Bennett</p> <p>9 and Kathryn Bennett, on behalf of the plaintiff.</p> <p>10 MS. FUNDINGSLAND: Lynne Fundingsland,</p> <p>11 on behalf of the defendants.</p> <p>12 VIDEOGRAPHER: Thank you.</p> <p>13 Would the court reporter please administer</p> <p>14 the oath?</p> <p>15 * * *</p> <p>16 (Witness sworn.)</p> <p>17 AMELIA HUFFMAN,</p> <p>18 called as a witness, being first duly sworn,</p> <p>19 was examined and testified as follows:</p> <p>20 * * *</p> <p>21 EXAMINATION</p> <p>22 BY MR. STORMS:</p> <p>23 Q. Please state and spell your name for the record.</p> <p>24 A. Amelia Huffman. A-M-E-L-I-A H-U-F-F, like</p>	3	<p>1 been several years since I've seen them.</p> <p>2 Q. Do you recall which videos you reviewed related 3 to the incident?</p> <p>4 A. I have seen the video from the pen cam and I 5 have seen the video from the Y.</p> <p>6 I do not recall if I've seen the Taser 7 video. I don't think so.</p> <p>8 Q. And were these videos that you observed shortly 9 after the incident itself?</p> <p>10 A. Yes.</p> <p>11 Q. And any time between now and the first time you 12 viewed those videos have you viewed them again?</p> <p>13 A. No, I have not.</p> <p>14 Q. Okay. What was your purpose for viewing the 15 videos initially?</p> <p>16 A. In my role as the commander of criminal 17 investigations I received briefings from the 18 investigators and during those briefings I 19 viewed the videos.</p> <p>20 Q. I want to briefly talk about your background. 21 My understanding is that you graduated from 22 Smith College?</p> <p>23 A. I did.</p> <p>24 Q. And what year did you join the MPD?</p> <p>25 A. 1994.</p>	5

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<p>6</p> <p>1 Q. And when did you receive a promotion to 2 sergeant? 3 A. 1999. 4 Q. And when were you promoted after your sergeant 5 promotion? 6 A. I was promoted to lieutenant... Ah, let's see. 7 In 2005 perhaps. I'd have to go look to be 8 sure. 9 And then I took over my position as captain 10 in criminal investigations in July of 2008. 11 Q. In 2005, when you were a lieutenant were you -- 12 which precinct were you assigned to? 13 A. First I was assigned to the 5th Precinct in 14 Southwest Minneapolis. And then I was assigned 15 as the public information officer for the 16 department. 17 Q. And what was your role as the public information 18 officer? 19 A. To give public information to the media and 20 other sources who were inquiring. 21 Q. You would conduct press briefings? 22 A. Correct. 23 Q. Okay. And you remained in... Was that the -- 24 the second role you held as a lieutenant then? 25 A. Yes. And then the third role I held as a</p>	<p>8</p> <p>1 the homicide commander to determine whether an 2 investigation is complete. You know, because 3 the -- the user of that investigation really is 4 the prosecutor's office, we're deferring greatly 5 to their judgment. 6 Q. They would expect that you would have the 7 experience... 8 It would be expected that you have the 9 experience and training necessary, though, to 10 provide input with respect to whether or not an 11 investigation is complete? 12 A. Yes, that's correct. 13 Q. Or other investigative tasks should be 14 performed? 15 A. Yes. 16 Q. And it's your job to reach those decisions from 17 the police perspective as opposed to the 18 prosecuting perspective? 19 A. Yes. Although again, you know, we don't do that 20 in a vacuum. We collaborate extensively with 21 the prosecutor's office in reviewing cases. You 22 know, that's a critical partnership for us. 23 Q. And there were times where I take it as the head 24 of homicide that you had investigations that 25 appeared incomplete and you'd asked your</p>
<p>7</p> <p>1 lieutenant for the last year was as the 2 commander of homicide. 3 Q. And in 2007 you were promoted to commander of 4 homicide? 5 A. Yes. 6 Q. Okay. As commander of homicide what did your 7 duties entail? 8 A. Overseeing the work of the homicide 9 investigators. Coordinating the work of the 10 unit. Managing the schedule. Assigning cases. 11 The general administration and management of the 12 unit. 13 Q. Would the results of every homicide 14 investigation ultimately end up on your desk? 15 A. Yes. I would have been receiving briefings from 16 the investigators and have reviewed documents 17 and reports for every homicide investigation. 18 Q. And in that role was it your duty to conclude 19 whether or not a homicide investigation had been 20 adequately performed? 21 A. Well, ultimately it's really the judgment of the 22 prosecutor's office to determine whether there's 23 additional evidence or investigation they would 24 like to see pursued before charging a case. 25 So, you know, it's not solely the role of</p>	<p>9</p> <p>1 investigators to go back and obtain additional 2 information? 3 A. In collaboration with the prosecutor's office? 4 Q. Independently or in collaboration. 5 A. Yes, absolutely there are times when the 6 prosecutor's office asks for additional 7 information in every kind of case. Or asks to 8 -- the investigators to pursue something to see 9 whether a certain kind of information could be 10 obtained. 11 Q. And were there times when you personally, 12 outside of the prosecution, would -- would see 13 information that you thought should be obtained 14 in connection with an investigation and 15 instructed your investigators to obtain that 16 information? 17 A. Sure. Absolutely. I have conversations even 18 now in my current role with investigators 19 discussing cases and, you know, saying, "What 20 about this avenue? Have we tried this avenue?" 21 You know, "Could we bring this person in?" 22 You know, certainly the commander of 23 homicide and the commander of criminal 24 investigations have those kind of conversations 25 with investigators routinely.</p>

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<p>10</p> <p>1 Q. And in order to -- to lead homicide in the 2 fashion that you did, you necessarily have to 3 have an understanding of -- of the laws that 4 apply to homicide? 5 A. Yes. 6 Q. The laws that apply to evidence collection? 7 A. Yes. 8 Q. You want to make sure that your officers are 9 acting within their constitutional parameters in 10 terms of collecting evidence? 11 A. Correct. 12 Q. And then you have situations, I take it then, 13 where there were officer-involved homicides that 14 you oversaw? 15 A. Correct. 16 Q. Because Minneapolis does handle all its own 17 officer-involved homicides? 18 A. Yes, we do. 19 Q. And in order to necessarily evaluate those 20 incidents, officer-involved homicides, you'd 21 have to have an understanding of what the proper 22 constructs are of officer conduct? 23 A. Yes. 24 Q. You have to have an understanding of how 25 officers can appropriately behave under the</p>	<p>12</p> <p>1 Q. Is that something you've done in the past? 2 A. I'm trying to think of a specific case where 3 Internal Affairs wasn't already working on it. 4 Their process starts at the same time that the 5 homicide investigation starts, so it's not as if 6 they're waiting for us to say there was a policy 7 violation to jump-start their investigation. 8 So they're routinely working on those things 9 right from the beginning, at the same time that 10 homicide is. 11 Q. Well, and if you have an officer-involved 12 shooting, or something to that extent, when 13 you're looking at the propriety of the officer's 14 conduct from a homicide perspective, you might 15 look to policy for guidance on whether or not 16 that conduct was appropriate? 17 A. Yes. I mean certainly we have policies that are 18 reflective of the law, but generally what we're 19 looking for in the criminal investigation, what 20 our investigators are focusing on from 21 homicide's perspective is pulling together all 22 the evidence for the county attorney's office to 23 review and to present to the grand jury if they 24 should so choose. 25 So policy questions, you know, "Was the</p>
<p>11</p> <p>1 4th Amendment? 2 A. Yes. 3 Q. And you have to have an understanding of what 4 MPD policy is and whether or not your officers 5 are operating within those policies? 6 A. Yes, although policy questions are handled 7 separately from the criminal issue. 8 So for in every -- for every officer 9 involved critical incident, you know, a shooting 10 or other use of force that results in some kind 11 of serious injury or death, there are two 12 parallel processes that go on. 13 And policy questions are handled in an 14 administrative review and that's done 15 separately. 16 So the homicide investigators provide 17 information that ultimately goes to that 18 investigation. The information doesn't come 19 back the other way. Those two processes aren't 20 intertwined. 21 Q. If you see a policy violation, as the head of 22 homicide, you obviously have the ability to 23 point that out to Internal Affairs 24 investigators? 25 A. Yes, certainly, if we see a policy violation.</p>	<p>13</p> <p>1 officer, you know, carrying all of their 2 equipment appropriately..." 3 You know, "Did the use of force, the 4 non-criminal questions of use of force meet 5 policy and training?" Those things are handled 6 during the administrative review. 7 In this case there was an administrative 8 review. I wasn't involved in that. The 9 homicide investigators were not involved in that 10 other than pulling together the information, 11 some of which would have been used in that 12 administrative review. 13 And I haven't seen the results of that, so I 14 can't speak to anything that would have been 15 part of that administrative review. 16 Q. And by "administrative review" were you 17 referring to the force review that was 18 ultimately done through Internal Affairs? 19 A. Correct. 20 Q. Now one of the things that you would observe 21 naturally as part of leading homicide 22 investigations would be whether or not other 23 related crimes might have occurred? 24 A. Yes. 25 Q. For example, if you saw that someone was hiding</p>

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<p>14</p> <p>1 evidence related to that homicide, that's</p> <p>2 something you would observe and probably point</p> <p>3 out to a prosecutor?</p> <p>4 <b>A. Yes. Although I doubt the prosecutors would</b></p> <p>5 <b>need me to point that out.</b></p> <p>6 Q. Because it would be so obvious?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And if you believed as the head of</p> <p>9 homicide that someone was hiding evidence from</p> <p>10 your investigators you might work with your</p> <p>11 investigators to take steps to go ahead and</p> <p>12 obtain that evidence?</p> <p>13 A. Yes.</p> <p>14 Q. You might obtain a search warrant, for example?</p> <p>15 <b>A. Yes, we might.</b></p> <p>16 Q. If you're dealing with issues of -- related to</p> <p>17 computers or other electronics, you might have a</p> <p>18 forensic review conducted?</p> <p>19 A. Yes.</p> <p>20 Q. That's something you probably directed to be</p> <p>21 done many times?</p> <p>22 <b>A. Yes. That's generally something that you know</b></p> <p>23 <b>can be done and often is done in not just</b></p> <p>24 <b>homicide cases, but other kinds of cases</b></p> <p>25 <b>involving technology.</b></p>	<p>16</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And those are the types of issues that</p> <p>3 any -- in the course of conducting any good</p> <p>4 homicide investigation you would necessarily</p> <p>5 evaluate those issues, as well?</p> <p>6 <b>A. Certainly. If those issues came up that would</b></p> <p>7 <b>be something the prosecutor's office would be</b></p> <p>8 <b>aware of and, you know, could choose to take</b></p> <p>9 <b>action on.</b></p> <p>10 Q. Well, and MPD -- the MPD Homicide Department</p> <p>11 could pursue that investigation on their own, as</p> <p>12 well?</p> <p>13 <b>A. Yes. But in terms of actually making a decision</b></p> <p>14 <b>whether or not to pursue some kind of charging,</b></p> <p>15 <b>that decision is made by the prosecutor's</b></p> <p>16 <b>office.</b></p> <p>17 Q. As the MPD Homicide Unit...</p> <p>18 Does the MPD Homicide Unit make</p> <p>19 recommendations at all to the Hennepin</p> <p>20 County Attorney's Office?</p> <p>21 A. Sure.</p> <p>22 Q. Okay. So if you conduct a homicide</p> <p>23 investigation you -- at the end of that</p> <p>24 investigation you might say, you know, "This</p> <p>25 person we believe should be charged for some</p>
<p>15</p> <p>1 Q. And if someone doesn't -- does hide evidence</p> <p>2 from investigators it's clear that that's</p> <p>3 obstruction of justice typically, isn't it?</p> <p>4 <b>A. If someone were hiding, yes. Although I mean in</b></p> <p>5 <b>general in homicide cases I have not seen...</b></p> <p>6 <b>In fact, I don't think I've seen any cases</b></p> <p>7 <b>where we've had additional charges related to a</b></p> <p>8 <b>homicide that were specifically for hiding some</b></p> <p>9 <b>kind of piece of evidence.</b></p> <p>10 <b>You know, we do sometimes see people who are</b></p> <p>11 <b>charged as an accessory after the fact for, you</b></p> <p>12 <b>know, helping someone escape the scene, or to</b></p> <p>13 <b>flee the jurisdiction, something like that.</b></p> <p>14 <b>But I don't recall any cases where I've seen</b></p> <p>15 <b>our prosecutor's office charge someone for</b></p> <p>16 <b>knowing that the suspect dumped bloody clothes</b></p> <p>17 <b>in a garbage can and not telling investigators</b></p> <p>18 <b>when they were questioned, for example.</b></p> <p>19 Q. That certainly could be obstruction of justice?</p> <p>20 <b>A. It certainly could be, but I have not actually</b></p> <p>21 <b>seen that charged.</b></p> <p>22 Q. And if I aided someone in doing that, in hiding</p> <p>23 the evidence, that's a situation where I could</p> <p>24 potentially be criminally liable for accessory</p> <p>25 after the fact?</p>	<p>17</p> <p>1 degree of murder and also obstruction of</p> <p>2 justice"?</p> <p>3 <b>A. Yes. Although, like I said before, I haven't</b></p> <p>4 <b>seen cases that are charged out in the way that</b></p> <p>5 <b>you're suggesting, so I don't think that that's</b></p> <p>6 <b>something that we would be recommending because</b></p> <p>7 <b>it's not typically what's done here in</b></p> <p>8 <b>Hennepin County.</b></p> <p>9 <b>I mean certainly we have made</b></p> <p>10 <b>recommendations, you know, or have asked the</b></p> <p>11 <b>county attorney's office to review cases where</b></p> <p>12 <b>someone is ultimately charged as an accessory,</b></p> <p>13 <b>but it's not under the circumstances that you're</b></p> <p>14 <b>suggesting.</b></p> <p>15 Q. And so the circumstances I'm suggesting... It's</p> <p>16 not that those couldn't be true, it's just</p> <p>17 something you haven't actually encountered?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now did you remain in -- ahead of</p> <p>20 homicide from 2007 to 2008; is that right?</p> <p>21 <b>A. Yes. In July of 2008 is when I took over my</b></p> <p>22 <b>current position.</b></p> <p>23 Q. Okay. And what position is that?</p> <p>24 <b>A. It's the captain/commander of Criminal</b></p> <p>25 <b>Investigations Division.</b></p>

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18	<p>1 Q. And is that based out of one of the precincts?</p> <p>2 A. No. It's based out of city hall.</p> <p>3 Q. And what are your duties as the commander of</p> <p>4 investigations?</p> <p>5 A. So I supervise the lieutenants who supervise the</p> <p>6 investigative units.</p> <p>7 So looking at the overall coordination of</p> <p>8 our investigative resources.</p> <p>9 Making decisions about staffing.</p> <p>10 Helping to plan training.</p> <p>11 We work closely with the county attorney's</p> <p>12 office to do yearly training for all</p> <p>13 investigators.</p> <p>14 Looking at overall resources, training</p> <p>15 that's needed from outside, other resources that</p> <p>16 are needed from outside. Those kind of</p> <p>17 administrative and management things.</p> <p>18 Q. And what units do you supervise?</p> <p>19 A. Let's see. Homicide. Assaults. Robbery. Sex</p> <p>20 Crimes. Domestic Assault. Child Abuse. And</p> <p>21 the Safe Streets Task Force.</p> <p>22 I also have the civilian portions of the</p> <p>23 department in records transcription and property</p> <p>24 and evidence.</p> <p>25 Q. And incidents defined by the...</p>	20	<p>1 Q. And where were you at the time?</p> <p>2 A. In Room 108, which is in city hall. It's the</p> <p>3 main criminal investigations section.</p> <p>4 Q. Is that where you... What was your purpose for</p> <p>5 being in Room 108 at that time?</p> <p>6 A. My office is there.</p> <p>7 Q. Okay. So does Room 108 -- Room 108 house</p> <p>8 several offices?</p> <p>9 A. It does. It houses the bulk of investigations,</p> <p>10 not the entirety, but homicide, assault,</p> <p>11 robbery, some of sex crimes, domestic assault</p> <p>12 and child abuse are there. And then there are</p> <p>13 some additional office spaces that house other</p> <p>14 investigators.</p> <p>15 Q. So Room 108, that's where Lieutenant Zimmerman</p> <p>16 is also based?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So it's not really just one room, it's</p> <p>19 many rooms?</p> <p>20 A. Yeah, it's a -- it's a long L-shaped corridor</p> <p>21 with lots of cubicles and offices.</p> <p>22 Q. After receiving the text message do you recall</p> <p>23 what the next steps were that you took?</p> <p>24 A. Well, at that point the investigators, you know,</p> <p>25 left to go out to the scene and collect</p>
19	<p>1 Investigations defined by the MPD as</p> <p>2 critical incident investigations, do those fall</p> <p>3 within the work of homicide?</p> <p>4 A. They do.</p> <p>5 Q. And that was how you came to be involved with</p> <p>6 the David Smith case?</p> <p>7 A. Correct.</p> <p>8 Q. It was in your role as supervising -- was it</p> <p>9 Lieutenant Zimmerman at the time?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. How was it that you came to learn about</p> <p>12 the David Smith incident?</p> <p>13 A. So whenever there is a critical incident there's</p> <p>14 a notification system and so the lieutenant of</p> <p>15 homicide, the commander of criminal</p> <p>16 investigations are on the list of people who are</p> <p>17 automatically notified in that kind of</p> <p>18 circumstance.</p> <p>19 So in this particular case I was notified as</p> <p>20 a matter of course.</p> <p>21 Q. You got the text message?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Were you on duty at the time you received</p> <p>24 the text message?</p> <p>25 A. I was.</p>	21	<p>1 information.</p> <p>2 So at that point all I was doing was waiting</p> <p>3 for the investigators and the folks, the</p> <p>4 precinct officers who were assigned it, to that</p> <p>5 particular call, to do their tasks.</p> <p>6 So I wasn't doing anything more than waiting</p> <p>7 for that information to start coming back as a</p> <p>8 part of the investigation.</p> <p>9 Q. It's Lieutenant Zimmerman that takes the role in</p> <p>10 terms of delegating those tasks; is that right?</p> <p>11 A. Correct. He's the direct commander of homicide,</p> <p>12 so in terms of assigning resources there's an</p> <p>13 investigative team who is on call during any</p> <p>14 given period of time. And so they would be the</p> <p>15 ones who would be first up to -- to respond and</p> <p>16 catch that case. And then he would assign</p> <p>17 additional resources, as needed.</p> <p>18 Q. And so you're not making any -- or giving any</p> <p>19 direct orders at that point in time?</p> <p>20 A. Correct.</p> <p>21 Q. Are you giving any direct orders -- when you</p> <p>22 find out about this did you give</p> <p>23 Lieutenant Zimmerman any orders?</p> <p>24 A. No.</p> <p>25 Q. Okay. So he's operating pretty autonomously at</p>

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<p>22</p> <p>1 that point?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. When was it that you first became</p> <p>4 involved then after receiving the text message?</p> <p>5 A. So once -- once the investigation had progressed</p> <p>6 to the point that folks were coming downtown...</p> <p>7 The involved officers had come downtown.</p> <p>8 And we use another room in city hall, which is</p> <p>9 really a collection of rooms, but Room 100 as</p> <p>10 the headquarters for where we bring the involved</p> <p>11 officers. The folks from the police Federation</p> <p>12 come, the chaplain, the attorneys and so on and</p> <p>13 so forth.</p> <p>14 At that point the Taser coordinator, who was</p> <p>15 Adam Grobove, came down and asked for guidance</p> <p>16 about downloading the Taser cam video.</p> <p>17 And at that point I said, yes, you know, we</p> <p>18 should download that. Get the item entered into</p> <p>19 evidence and then check it out, download it, as</p> <p>20 his procedure normally is so that it can be</p> <p>21 viewed as part of the investigation.</p> <p>22 So that was at the first point where, you</p> <p>23 know, I offered input about the course of the</p> <p>24 investigation.</p> <p>25 Q. So you're in Room 108 at that point in time?</p>	<p>24</p> <p>1 sources of information as possible in the</p> <p>2 investigation. And the video is available, it</p> <p>3 just needs to be downloaded. So there's no</p> <p>4 reason to wait to download it and view it</p> <p>5 because we have the Taser coordinator who is the</p> <p>6 person who has the capability to use the</p> <p>7 equipment to download that video properly,</p> <p>8 present right there on the scene, so there's no</p> <p>9 reason not to do it now.</p> <p>10 Q. And in the course of a homicide investigation</p> <p>11 you're taught to collect as much evidence as</p> <p>12 quickly as possible, isn't that right?</p> <p>13 A. Yes. We like to get as much as we can.</p> <p>14 Q. You want to prevent any of the evidence from</p> <p>15 being disturbed or perverted in any fashion?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the sooner you have evidence in your</p> <p>18 possession, the -- the sooner you have the</p> <p>19 ability to go and collect other evidence</p> <p>20 potentially?</p> <p>21 A. Yes.</p> <p>22 Q. Before that evidence is disturbed?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And my understanding is that from the</p> <p>25 outset you're treating this as a critical</p>
<p>23</p> <p>1 A. So the conversation, as I recall, started in</p> <p>2 Room 108.</p> <p>3 I believe according to the supplements in</p> <p>4 the case we went to Room 100.</p> <p>5 I don't -- I don't recall being in 100</p> <p>6 versus being in 108. I remember the</p> <p>7 conversation, but which room it took place in</p> <p>8 didn't really stick in my memory.</p> <p>9 Q. And the individuals listed in being in 108 at</p> <p>10 the time that you had met with Adam Grobove were</p> <p>11 Sergeant Erick Fors, Lieutenant Zimmerman and</p> <p>12 yourself in 108.</p> <p>13 Does that sound familiar in terms of people</p> <p>14 who were there?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Is there anyone else that you had</p> <p>17 remembered being there at the time?</p> <p>18 A. No.</p> <p>19 Q. Okay. So when Adam Grobove comes to you and</p> <p>20 talks about the Taser download you think it's</p> <p>21 important to get that information right away?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And why is it important to get that</p> <p>24 information right away?</p> <p>25 A. Well, obviously we want to have as -- as many</p>	<p>25</p> <p>1 incident?</p> <p>2 A. Yes. From the outset we treat it as a critical</p> <p>3 incident.</p> <p>4 It wasn't clear at the time what the</p> <p>5 ultimate outcome would be. And obviously David</p> <p>6 Smith didn't die at the scene, the way we see in</p> <p>7 some critical incident cases where, you know, we</p> <p>8 know right there that we're dealing with a</p> <p>9 death. But it was clear that it was serious</p> <p>10 incident, he was going to be admitted to the</p> <p>11 hospital and that falls under our critical</p> <p>12 incident policy.</p> <p>13 So it's not only cases of death that get</p> <p>14 treated as a critical incident.</p> <p>15 Q. And as a critical incident you had -- I know you</p> <p>16 had mentioned that a Federation officer is there</p> <p>17 and that was -- eventually captain -- or</p> <p>18 Lieutenant Delmonico showed up on the scene?</p> <p>19 A. I don't know if he was at the scene.</p> <p>20 Q. Or I'm sorry. At Room 100?</p> <p>21 A. Yes. Yes. The Federation always shows up in</p> <p>22 Room 100 for the involved officers.</p> <p>23 Q. And what's the purpose of the Federation showing</p> <p>24 up?</p> <p>25 A. It's part of our critical incident policy that</p>

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<p style="text-align: right;">26</p> <p>1 the -- the officers have a right to confer with 2 the Federation rep and an attorney. 3 And so the Federation comes so that the 4 officers can exercise their right to confer with 5 them. 6 Q. And what's your understanding of why they have 7 that right? 8 A. Well, because it's a criminal investigation at 9 that point. 10 All the information that homicide is 11 collecting is going to be presented to the 12 county attorney's office and possibly, or in the 13 case of a death definitely, reviewed by a 14 grand jury. And so the officers have legal 15 rights that the Federation protects. 16 Q. Now I read in your critical incident policy 17 that, you know, part of the critical incident 18 policy in addition to making sure that evidence 19 is adequately collected is to sort of be 20 sensitive to the officer's needs. You don't 21 want to treat the officer like a suspect? 22 A. That is correct. That is part of our policy. 23 Q. Okay. Just because you're not treating the 24 officer like a suspect, that doesn't mean that 25 the MPD is going to treat that investigation</p>	<p style="text-align: right;">28</p> <p>1 professionally-competent investigation into his 2 homicide? 3 A. Yes, they are. 4 Q. Okay. And any concerns about the officers' 5 feelings wouldn't get in the way of that? 6 A. No. 7 Q. Okay. Now in accordance with some of the 8 officer's rights that he is provided under your 9 policy, there -- there are only certain 10 individuals who he needs to talk to and he only 11 needs to talk to those individuals about certain 12 things. Is that a fair characterization? 13 A. Yes, that is a fair characterization. 14 Q. One of the things that can be discussed with the 15 officer is issues related to the collection of 16 evidence? 17 A. Yeah. In general they take a public -- what's 18 called a Public Safety Statement from the 19 officers, so asking them questions that would 20 lead us to any additional suspects, any other 21 injured people, the recovery of weapons. Those 22 things that are of immediate public safety 23 interest. 24 Q. And that's what can be asked at the scene? 25 A. Correct. We don't ask additional questions</p>
<p style="text-align: right;">27</p> <p>1 with any less rigor, does it? 2 A. Correct. And, you know, we have certainly 3 investigations that are ultimately ruled to be 4 justifiable homicide, after review by the 5 county attorney's office, that don't involve any 6 officers, involve completely civilians. 7 And so, you know, officer-involved cases are 8 not ultimately the only ones that are reviewed 9 and determined to be justifiable homicide. 10 Q. One of the things that's noted, though, is you 11 want to make sure you maintain -- in the 12 critical incident policy, is you want to make 13 sure that you maintain public confidence. There 14 is sort of an awareness, at least on the MPD's 15 part, that if there are not proper procedures in 16 place the investigation of its own officers 17 might appear less than proper? 18 A. Yes, that's true. 19 Q. And so you want to be particularly keen to 20 making sure that the proper procedural steps are 21 taken with respect to investigating an 22 officer-involved homicide? 23 A. Yes. 24 Q. Mr. Smith, his family, the entire community, 25 they're entitled to a proper and</p>	<p style="text-align: right;">29</p> <p>1 beyond the Public Safety Statement that's taken, 2 other than, you know, things like, "Can I get 3 you a drink of water?" And, you know, "Do you 4 need to use the bathroom?" 5 But we don't ask investigative questions 6 beyond the Public Safety Statement. That's 7 what's allowable under our policy. 8 Q. You are allowed to require -- the MPD can 9 require the officers to turn over any equipment 10 on their person at that point? 11 A. Well, the policy calls for collecting their 12 weapon. So we do a gun exchange in the case of 13 a shooting. 14 In this case we collected the Taser, which 15 is department-issued property. 16 You know, in other cases certainly we've had 17 officers who were involved in a prolonged 18 struggle who have torn uniforms and we ask them 19 if we can collect that right at the scene. And 20 we have hospital-type scrubs that we exchange 21 for their clothing. 22 So depending on the circumstances, we 23 collect or ask for different things. 24 MR. STORMS: Can I have this marked, 25 please.</p>

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<p>30</p> <p>1 (Exhibit 92 marked )</p> <p>2 BY MR. STORMS:</p> <p>3 Q. I'm going to show you what's been marked as</p> <p>4 Exhibit 92. Take a moment to review it.</p> <p>5 I'm going to direct you towards the back of</p> <p>6 the policy where the critical incident is</p> <p>7 discussed.</p> <p>8 In particular I'm going to go to page 9 of</p> <p>9 12.</p> <p>10 Do you see the -- in the first full</p> <p>11 paragraph on page 9...</p> <p>12 Well, first of all, does this appear to be a</p> <p>13 correct copy of your MPD policy related to</p> <p>14 critical incidents?</p> <p>15 A. Yes.</p> <p>16 Q. Here it states, "If requested by Investigators,</p> <p>17 Involved Officers shall make themselves</p> <p>18 available for firearms inspection and shall</p> <p>19 surrender his or her firearm and any other</p> <p>20 requested equipment to them."</p> <p>21 A. Yes. And generally we do the weapons exchange.</p> <p>22 We haven't had any cases that I can recall</p> <p>23 that involved an impact weapon.</p> <p>24 But, for example, we could ask to -- to take</p> <p>25 a Taser. We often do ask to take pieces of a</p>	<p>32</p> <p>1 over, you can certainly ask them what equipment</p> <p>2 they have on them?</p> <p>3 A. I'm not sure we've ever had that situation where</p> <p>4 we've just asked, "What's every piece of</p> <p>5 equipment that you're carrying?"</p> <p>6 We've never asked that question that way.</p> <p>7 Q. Have you ever asked whether or not they're in</p> <p>8 possession of evidence related to the incident,</p> <p>9 physical evidence?</p> <p>10 A. Have we ever asked that question?</p> <p>11 Q. (Nodding.)</p> <p>12 A. To my knowledge we've never asked that question.</p> <p>13 Q. How about a question similar to that?</p> <p>14 A. We've asked questions like, you know, "Is any of</p> <p>15 your equipment damaged?" "Do you have any</p> <p>16 injuries?" We frequently ask those questions</p> <p>17 because there's a struggle involved. "Do you</p> <p>18 have any injuries for us to photograph?"</p> <p>19 So -- so we ask questions based on the</p> <p>20 information that we know about the use-of-force</p> <p>21 incident.</p> <p>22 Q. Do you ask them simply, "What equipment did you</p> <p>23 use in this incident"?</p> <p>24 A. No.</p> <p>25 Q. Why wouldn't you ask them that question?</p>
<p>31</p> <p>1 uniform that have been damaged in a fight.</p> <p>2 Most of the time it involves the gun</p> <p>3 exchange, but certainly in other cases it has</p> <p>4 involved other kinds of equipment, typically</p> <p>5 uniform.</p> <p>6 Q. Well, in order to determine what type of</p> <p>7 equipment has been involved, the basic question</p> <p>8 of "What equipment did you use" would be</p> <p>9 something that would be asked of the officers,</p> <p>10 wouldn't it?</p> <p>11 A. Well, generally during the Public Safety</p> <p>12 Statement, you know, there's that question</p> <p>13 that's asked about, you know, the direction of</p> <p>14 any kinds of fire, the weapons that were used,</p> <p>15 the public safety pieces that get asked. So</p> <p>16 it's not an exhaustive set of questions.</p> <p>17 But yes, generally we have an idea of what</p> <p>18 equipment was used in the actual use-of-force</p> <p>19 piece.</p> <p>20 And we can clearly see if there's damage</p> <p>21 that's been done to someone's uniform or they</p> <p>22 have something broken, pieces of equipment</p> <p>23 hanging off of their belt. We can see those, so</p> <p>24 we don't need to ask questions about it.</p> <p>25 Q. Well, if you can ask them to turn equipment</p>	<p>33</p> <p>1 A. We know from the information about the use of</p> <p>2 force -- we know what kind of</p> <p>3 use-of-force-incident it was, but we've never</p> <p>4 asked that question, "What equipment did you</p> <p>5 use?"</p> <p>6 We know if it was a shooting, we know if</p> <p>7 there was a struggle... But we don't ask that</p> <p>8 broad question. We've never asked that broad</p> <p>9 question.</p> <p>10 MR. BENNETT:(Sotto voce comment.)</p> <p>11 MR. STORMS: Yeah.</p> <p>12 BY MR. STORMS:</p> <p>13 Q. I'm asking you why -- why you wouldn't ask that</p> <p>14 question?</p> <p>15 A. We wouldn't ask that question in that way</p> <p>16 because once the Public Safety Statement has</p> <p>17 been made we know -- we know the general</p> <p>18 parameters of the use-of-force incident.</p> <p>19 Q. Well, how would you know if an officer used his</p> <p>20 baton if he put the baton back in his utility</p> <p>21 belt?</p> <p>22 A. Well, because when they give the Public Safety</p> <p>23 Statement and they're asking about, you know,</p> <p>24 issues for medical treatment, additional</p> <p>25 suspects, you know, they're going to get an</p>

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<p style="text-align: right;">34</p> <p>1 overview of that use of force. But beyond that, 2 you know, we've never asked that broad question. 3 We don't ask that broad question. 4 MR. BENNETT: (Sotto voce comment.) 5 BY MR. STORMS: 6 Q. Why? 7 A. Because -- because what -- because we ask the 8 public safety statement and that's designed to 9 get at the -- the issues that are -- that are 10 required to be handled immediately at the scene. 11 And those broad questions we're supposed to ask 12 later when the officer comes in for a statement. 13 Q. Well, one of the things you want to accomplish 14 at the scene is to collect all available 15 evidence. 16 A. Yes. 17 Q. If the officer is in possession of evidence that 18 is not disclosed in the Public Safety Statement 19 how would you as a department be aware of the 20 existence of that evidence? 21 A. If it's not disclosed during the Public Safety 22 Statement and there's no witness officer or 23 other witness who would be able to tell us about 24 it, we might not know until we took a statement 25 from an officer.</p>	<p style="text-align: right;">36</p> <p>1 of the incident we would certainly ask about 2 that. We would find out that information. 3 If a civilian witness refused to make a 4 statement at that time we wouldn't know about it 5 then either. 6 Q. Why is it that you were able to photograph 7 Officer Callahan and Officer Gorman from every 8 angle under your policy? 9 A. That's typical. We photograph in every case so 10 there's not a question about what kind of 11 uniform or markings that the officers had 12 designating them as police. 13 We sometimes have officers who are in plain 14 clothes, but wearing a badge around their neck 15 or they're wearing raid garments that say 16 "POLICE." 17 We want to make sure that it's clear, you 18 know, that officers were in full uniform, or 19 they were in some kind of modified uniform, or 20 if they were plain clothes wearing a badge on a 21 chain around their neck, that that's documented. 22 Q. Have you seen the photographs that were taken in 23 this case? 24 A. No, I have not. 25 Q. You were in the room when the photographs were</p>
<p style="text-align: right;">35</p> <p>1 Q. So you would -- so under MPD policy an officer, 2 if he doesn't disclose critical evidence during 3 a Public Safety Statement, he would be able to 4 walk away from that scene without ever having to 5 disclose to the MPD the existence of that 6 evidence? 7 A. Yes. If there were no witness officers who were 8 giving us a statement at the time and there were 9 no other witnesses and there were information 10 that wasn't part of the Public Safety Statement, 11 we wouldn't know it until we took a voluntary 12 statement from the officer later. 13 Q. If a civilian was involved in a potential 14 homicide and had evidence related to that 15 homicide on their person, would you not ask 16 about their possession of that evidence? 17 A. If we're taking a statement from a civilian 18 witness and they're -- they're giving us a 19 statement, we would ask them about that. 20 When the officer comes in for a statement we 21 obviously ask questions of them, but we're not 22 taking that statement at the time because our 23 policy doesn't allow for that. 24 So when we're taking a statement from a 25 civilian witness if we're taking it at the time</p>	<p style="text-align: right;">37</p> <p>1 being taken, weren't you? 2 A. I don't believe I was still in the room when the 3 photographs were being taken. 4 Q. So you think you left before they did the 5 inventorying of Officer Callahan and 6 Officer Gorman? 7 A. I think so. I don't -- I don't remember the 8 photographs being taken. 9 Q. So you're not aware of the fact that they 10 photographed, for example, the disposable camera 11 that Officer Callahan used to have a photograph 12 of his face taken? 13 A. I saw that in the statements, yes. 14 Q. Okay. So you did see that in the statements? 15 A. Yes. That they used a -- a disposable camera to 16 take pictures because he had an injury to his 17 jaw. 18 Q. So is -- is the only evidence Officer Callahan 19 required to turn over is the evidence that he 20 voluntarily decides to turn over? 21 A. Our policy is written so that we take the Public 22 Safety Statement. We have the officers 23 photographed. We do a weapons exchange. But 24 they're not required to give a statement at the 25 time.</p>

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<p>38</p> <p>1 The statement is a voluntary statement that 2 they give, so if we were to compel a statement 3 from them at the time of the incident it would 4 be a Garrity statement. 5 A Garrity statement cannot be used in the 6 criminal portion of the investigation, which is 7 what homicide is doing. 8 Q. Can an MPD officer knowingly leave the scene of 9 an incident and knowingly leave Room 100 or 10 Room 108 with critical evidence related to the 11 incident without repercussion? 12 A. If there were no other witness who would be able 13 to tell us about that piece of evidence the 14 officer could leave and then during the course 15 of the rest of the investigation, you know, 16 hopefully that evidence would come to light. 17 Is it possible that someone could conceal a 18 piece of evidence that only they knew about it, 19 no one else knew about and never -- it would 20 never come to light? Yes, of course. 21 If I'm the only one who knows about 22 something, no one else knows it exists, and I 23 choose to never disclose it, no one else would 24 ever know but me. So yes, of course that could 25 happen.</p>	<p>40</p> <p>1 your shift, aren't you? 2 A. Yes. 3 Q. Officer Callahan didn't do that, did he? 4 A. No, he did not. 5 Q. Okay. Do you find that problematic? 6 A. I wish that he had turned that over at -- at the 7 scene in Room 100, yes, that would be ideal. 8 Q. So do you find that problematic? 9 A. Yes, I wish he would have turned it over in 10 Room 100, that would have been ideal. 11 Q. And it did violate MPD policy? 12 A. We don't have a policy -- we don't have a policy 13 that's specifically written for personal 14 recording devices, cameras, cell phones. We've 15 asked the city attorney's office for guidance 16 because those are our personally-owned devices. 17 We haven't yet received information to write 18 a policy. We still don't have a policy for 19 personal recording devices and phones. 20 Q. Well, you just told me that MPD policy is that 21 officers need to turn over all evidence related 22 to a crime before the end of their shift. 23 A. Yes. 24 Q. Now evidence is evidence regardless of whether 25 or not it was captured by Minneapolis-issued</p>
<p>39</p> <p>1 Q. So are you saying the officer has no obligation 2 either on the scene or in Room 100 to turn over 3 critical pieces of evidence related to a 4 critical incident? 5 A. I would say the officer has a professional 6 obligation to turn over critical pieces of 7 evidence, -- 8 Q. And -- 9 A. -- yes. 10 Q. -- what's that -- what's that professional 11 obligation consist of? 12 A. Well, you're required under all sorts of 13 sections of our policy to be -- to be truthful 14 when you're questioned. 15 For example, in this case if in the force 16 review a Garrity statement had been taken from 17 the officers, you're compelled to be truthful 18 under a Garrity statement. 19 You know, you're compelled in other parts of 20 our policy to behave with professional ethics. 21 And so obviously that would include bringing 22 forth critical pieces of evidence. 23 Q. But -- and -- but you're also compelled to turn 24 over all critical -- all evidence in your 25 possession related to a crime before the end of</p>	<p>41</p> <p>1 equipment or personal equipment? 2 A. Yes. However, we're told from the city 3 attorney's office that because this is a 4 personally-owned device that the question is 5 more complicated. 6 Ideally I think had we known about the 7 existence of the pen camera we would have asked 8 the crime lab to down -- download that video 9 immediately. That would have been the best way 10 to handle that piece of evidence. But we didn't 11 know about it at the time. If we had, that's 12 what we would have done. 13 Q. So you're saying what you -- that you believe 14 that what Officer Callahan did was proper under 15 policy; is that what you're saying? 16 A. No. I'm saying that we should have a better 17 policy that would address specifically this 18 issue. We don't. 19 We do have the policy that you have referred 20 to. 21 Ideally, the best thing for Officer Callahan 22 to have done would have been to have turned over 23 that video at the scene. That is the 24 best-possible scenario. That didn't happen in 25 this case.</p>

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<p style="text-align: right;">42</p> <p>1 Q. Doesn't the law require individuals -- officers 2 and individuals to turn that evidence over to 3 homicide investigators? 4 <b>A. The law --</b> 5 Q. Well, wouldn't it be obstruction of justice if I 6 were to conceal evidence from homicide 7 investigators? 8 MS. FUNDINGSLAND: I'm going to object 9 to the form of the question as to time. 10 Foundation. 11 BY MR. STORMS: 12 Q. You can answer. 13 <b>A. Yes, if somebody were willfully hiding evidence</b> 14 <b>and, you know, intended to never turn that over</b> 15 <b>to the police.</b> 16 Q. You -- you don't believe that Officer Callahan 17 accidentally walked out of Room 100 and went 18 home with that pen camera, do you? 19 <b>A. I don't know the answer to why Officer Callahan</b> 20 <b>didn't turn over the pen camera. I don't know.</b> 21 <b>I don't know whether he intended not to turn it</b> 22 <b>over because he wanted to view it first. I</b> 23 <b>don't know whether he forgot in all of the, you</b> 24 <b>know, upheaval of being involved in a critical</b> 25 <b>incident.</b></p>	<p style="text-align: right;">44</p> <p>1 over. His attorney turned it over at the time 2 he came in to fulfill his obligation to give a 3 statement. 4 Q. And he didn't turn it over in Room 100? 5 <b>A. That's correct, he did not.</b> 6 Q. And he actually -- it was his attorney who 7 turned it over? 8 <b>A. Correct.</b> 9 Q. Now you understand that as an attorney -- 10 MR. BENNETT: He turned a version of -- 11 MR. STORMS: Yeah. 12 MR. BENNETT: -- it. He didn't turn it. 13 MR. STORMS: I'll get there. 14 BY MR. STORMS: 15 Q. You understand as attorneys that we have ethical 16 obligations not to conceal or destroy evidence; 17 correct? 18 <b>A. Yes.</b> 19 Q. So how do you know that it was Officer Callahan 20 who made the decision not to turn -- or to turn 21 that information over to the MPD? 22 <b>A. I don't know beyond the fact that if</b> 23 <b>Officer Callahan had intended for that video</b> 24 <b>never to come to light, he would never have</b> 25 <b>turned it over to anyone, including his</b></p>
<p style="text-align: right;">43</p> <p>1 <b>I don't know the answer to that question</b> 2 <b>because I wasn't in Officer Callahan's mind.</b> 3 Q. I'm asking you what you believe. 4 <b>A. I don't know. I don't -- I honestly don't know</b> 5 <b>why Officer Callahan didn't turn that over.</b> 6 Q. Okay. Why didn't homicide ever ask Officer 7 Callahan why he did not turn that camera over? 8 <b>A. That -- that question is immaterial to the</b> 9 <b>information that's going to be presented to the</b> 10 <b>grand jury about the use of force.</b> 11 Q. Wouldn't it be material to the question of 12 whether or not there was obstruction of justice? 13 <b>A. No. Because Officer Callahan turned that video</b> 14 <b>over at the first time that he had contact with</b> 15 <b>investigators, when he came in to give his</b> 16 <b>statement.</b> 17 Q. Well, he had contact with investigators on the 18 scene. 19 <b>A. But he wasn't being questioned at that point.</b> 20 Q. He didn't -- he also didn't fulfill his 21 professional obligation, as you put it, to 22 divulge relevant information related to a 23 critical incident, did he? 24 <b>A. No, he did not turn that over at the scene. But</b> 25 <b>at the time that he was questioned he turned it</b></p>	<p style="text-align: right;">45</p> <p>1 attorney. 2 Q. Do you know... What -- what steps has homicide 3 taken to verify the veracity of that video 4 evidence? 5 <b>A. So that particular video evidence was compared</b> 6 <b>with the other video evidence.</b> 7 <b>So there's video from the Y. There's video</b> 8 <b>from the Taser cam. And all of the video is</b> 9 <b>consistent.</b> 10 Q. The... You have an understanding that the -- 11 the pen camera video, as you viewed it, was not 12 taken by MPD investigators or homicide 13 investigators directly from the pen camera? It 14 was something that was taken from or viewed 15 after receiving it on a flash drive from 16 Officer Callahan? 17 <b>A. That's correct.</b> 18 Q. What has the MPD done investigative-wise to 19 determine that the video started where 20 Officer Callahan has represented that it 21 started? 22 <b>A. You mean in terms of like asking a forens- --</b> 23 <b>forensics to examine the video?</b> 24 Q. Right. 25 <b>A. The county attorney's office didn't ask us to</b></p>

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46	<p>1 have any forensic examination of that particular</p> <p>2 video done. We could have, but we did not.</p> <p>3 Q. You don't need the county attorney's office to</p> <p>4 direct you to do that, do you?</p> <p>5 A. No. But if it's not -- if it's not something</p> <p>6 that they need to have done for the presentation</p> <p>7 of evidence to the grand jury, why would we have</p> <p>8 the forensic computer examiners work on this</p> <p>9 particular piece of evidence versus another</p> <p>10 that's needed in another criminal investigation?</p> <p>11 Q. Well, how about to promote the public confidence</p> <p>12 and show that David Smith and his family are</p> <p>13 receiving a competent and professional homicide</p> <p>14 investigation? Wouldn't that be a good reason</p> <p>15 to investigate the veracity of that evidence?</p> <p>16 A. If there's no indication because there's nothing</p> <p>17 in the case that suggests that that piece of</p> <p>18 video differs from any of the other video or</p> <p>19 witness evidence on the scene, then there's no</p> <p>20 outstanding question.</p> <p>21 Q. Well, none of the video evidence captured the</p> <p>22 time before the pen camera started, did it?</p> <p>23 A. But the witness statements capture the entire</p> <p>24 incident from the time before the officers</p> <p>25 arrive, from the statements of the young boy,</p>	48	<p>1 statements overall are describing the same</p> <p>2 incident from different perspectives.</p> <p>3 Q. And so do you have an understanding of whether</p> <p>4 or not the video revealed inconsistencies in the</p> <p>5 officer and witness statements?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you compare the witness statements to</p> <p>8 the video?</p> <p>9 A. I did not -- I did not sit down and review every</p> <p>10 witness statement while I was watching the</p> <p>11 video. So, you know, if you're looking for a</p> <p>12 detailed timeline of, you know, "Witness X said</p> <p>13 this at the point where we think this video is</p> <p>14 showing this," no, I can't answer that question</p> <p>15 because I wasn't the primary investigator on</p> <p>16 this case.</p> <p>17 However, all of that evidence</p> <p>18 comprehensively provides a consistent account of</p> <p>19 the incident and all of it was viewed by the</p> <p>20 grand jury.</p> <p>21 Q. Well, the grand jury only saw whatever the</p> <p>22 Hennepin County Attorney's Office decided to</p> <p>23 show it; right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. We didn't get to present our evidence at</p>
47	<p>1 through the manager on duty bringing the</p> <p>2 officers upstairs, through the uninvolved</p> <p>3 non-employee witness at the Y who was watching</p> <p>4 the entire incident, through the Y's</p> <p>5 surveillance video, through the Taser cam video.</p> <p>6 Absent this pen cam video entirely, this</p> <p>7 incident is well documented.</p> <p>8 Q. Well, the pen camera video -- the video evidence</p> <p>9 would be the best possible evidence of what</p> <p>10 actually happened, wouldn't it?</p> <p>11 A. The video evidence is like all the evidence --</p> <p>12 other evidence. It's one slice of what</p> <p>13 happened.</p> <p>14 The pen camera video, the surveillance</p> <p>15 video, the Taser video, those are all small</p> <p>16 slices. They don't capture, you know, a</p> <p>17 360-degree panoramic view of this incident.</p> <p>18 Neither do the witnesses.</p> <p>19 Nothing captures a 360-degree panoramic view</p> <p>20 of any incident in any case.</p> <p>21 Q. Well, do you know that the video evidence shows</p> <p>22 inconsistencies in both witness statements and</p> <p>23 officer statements?</p> <p>24 A. Inconsistencies? I know that the -- the video</p> <p>25 and the witness statements and the officer</p>	49	<p>1 the grand jury?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So as you sit here today what proof do</p> <p>4 you have that the entire pen camera video was</p> <p>5 viewed by yourself and other investigators?</p> <p>6 MS. FUNDINGSLAND: I'm sorry, can you</p> <p>7 repeat that?</p> <p>8 MR. STORMS: Yeah, let me rephrase the</p> <p>9 question.</p> <p>10 BY MR. STORMS:</p> <p>11 Q. As you sit here today what certainty do you have</p> <p>12 that Officer Callahan when he turned over the</p> <p>13 flash drive turned over the entirety of the</p> <p>14 video that he had recorded that day?</p> <p>15 A. I'm not a forensic examiner so I don't have the</p> <p>16 expertise to answer that question.</p> <p>17 Q. And you didn't ask forensic examiners to answer</p> <p>18 that question, did you?</p> <p>19 A. No, we did not.</p> <p>20 Q. Nobody did?</p> <p>21 A. No.</p> <p>22 Q. Because they just took the officer's</p> <p>23 representation on faith?</p> <p>24 A. There was -- there was no indication that this</p> <p>25 video differed in any material way from any of</p>

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<p>50</p> <p>1 the other evidence in the case. 2 That particular video wasn't an open 3 question. 4 The incident was well documented. 5 Q. How come homicide never even asked 6 Officer Callahan to turn the camera itself over? 7 A. You know generally when we have video evidence, 8 digital video evidence, we don't collect the 9 entire system. 10 So we have the evidence from the Y camera. 11 We did not collect their system. 12 We collect evidence routinely from various 13 digital recording systems--convenience stores 14 where we have shootings. Banks. We don't 15 collect the entire system. 16 So I don't think that it occurred to the 17 investigators at that point to collect the 18 entire recording system because generally we 19 just collect the digital recording itself. 20 Q. It's a lot easier to collect a pen than it is to 21 collect an entire security system from, for 22 example, the YMCA, isn't it? 23 A. Sure. But, you know, we certainly could collect 24 every digital recording system. As you know, 25 some of them are quite small.</p>	<p>52</p> <p>1 form of the question. 2 BY MR. STORMS: 3 Q. Is that what you're telling me? Really? 4 A. So -- so what you're suggesting is that the 5 circumstances of this case are equivalent to me 6 being a -- a gangster involved in a drive-by 7 shooting? 8 Q. Well, why does it have to be a gangster? 9 Isn't -- isn't Officer Callahan a homicide 10 suspect in this case? 11 A. Homicide -- 12 Q. Yes -- yes or no? Is he a homicide suspect in 13 this case? 14 A. Yes. 15 Q. And was Officer Gorman a homicide suspect in 16 this case? 17 A. Yes. 18 Q. And you had an understanding that 19 Officer Callahan, as a homicide suspect, had a 20 recording device that recorded portions of a 21 homicide? 22 A. Yes. 23 Q. And despite the fact that he knowingly did not 24 immediately turn that device over to 25 investigators, you gave him a pass and never</p>
<p>51</p> <p>1 We sometimes have evidence that we collect 2 from, you know, the home of a private person, 3 for example, who has one camera that records 4 surveillance video on their garage because their 5 neighborhood has a problem with thefts from 6 their garage. 7 But in that case, you know, we would simply 8 take the downloaded evidence, as we did from the 9 Y, as we did in this case from the pen cam, as 10 we do from convenience stores. 11 You know, we ask the owners of the system to 12 download that evidence, the video evidence for 13 us and then we take it. 14 If the owner doesn't know how to download 15 the images from their own system our crime lab 16 will go out and attempt to do that for them, but 17 we don't routinely do that. 18 Q. Well, you're not talking about someone who is a 19 homicide suspect there, are you? If I was a 20 homicide suspect and I just turned over a 21 flash drive of what I said was the entire 22 version of a murder, you wouldn't get a warrant 23 or in some other way try to collect that 24 recording device from me as a homicide suspect? 25 MS. FUNDINGSLAND: I'll object to the</p>	<p>53</p> <p>1 forensically examined that pen; isn't that 2 right? 3 A. We never forensically examined that pen. But to 4 equate this case with every other homicide case 5 we investigate is -- is false. 6 Q. Why? Is Officer Callahan entitled to some sort 7 of different rules or does he have different 8 rights than any other defendant in a homicide? 9 Is that what you're saying? 10 MS. FUNDINGSLAND: Objection, compound 11 and argumentative. 12 THE WITNESS: No, but as I mentioned -- 13 BY MR. STORMS: 14 Q. It sounds like that's what you're saying. 15 MS. FUNDINGSLAND: Excuse me. 16 She's trying to answer the question. 17 THE WITNESS: As I mentioned before, we 18 have a number of cases every year that do not 19 involve off- -- involve officers, involving, you 20 know, entirely groups of civilians where the 21 cases are determined to be justifiable homicide. 22 And, you know, certainly we treat individual 23 cases based on the circumstances of those cases. 24 BY MR. STORMS: 25 Q. Well, in this case the result of the method of</p>

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<p>54</p> <p>1 dealing with the pen camera video was for you</p> <p>2 and the rest of the MPD to allow an active</p> <p>3 participant in the homicide to decide what would</p> <p>4 be evidence in the investigation; is that right?</p> <p>5 MS. FUNDINGSLAND: Objection,</p> <p>6 argumentative.</p> <p>7 BY MR. STORMS:</p> <p>8 Q. Who decided what video was going to be turned</p> <p>9 into the MPD in this case?</p> <p>10 A. Officer Callahan, --</p> <p>11 Q. Okay. Now what --</p> <p>12 A. -- in terms of that particular piece of video.</p> <p>13 Q. And what did the MPD ever do to ensure that they</p> <p>14 received the entire video?</p> <p>15 A. There was no reason to believe we did not</p> <p>16 receive the entire video. It was not the only</p> <p>17 piece of evidence in this case.</p> <p>18 MR. BENNETT: (Sotto voce comment.)</p> <p>19 BY MR. STORMS:</p> <p>20 Q. Is the answer nothing?</p> <p>21 A. The case is well documented.</p> <p>22 Q. Is the answer nothing?</p> <p>23 A. We didn't do a forensic investigation, no.</p> <p>24 Q. Okay. And you're telling me that if a homicide</p> <p>25 suspect turned over video evidence of a homicide</p>	<p>56</p> <p>1 turn that pen cam over at the scene or even</p> <p>2 mention it to us in Room 100. If he had we</p> <p>3 would have asked the crime lab to download the</p> <p>4 video from that pen cam.</p> <p>5 That's what we would do in a normal</p> <p>6 circumstance with anyone. We would -- we would</p> <p>7 get the video. Ideally we would have the crime</p> <p>8 lab download it.</p> <p>9 We didn't have that opportunity because</p> <p>10 Officer Callahan didn't tell us he had a pen</p> <p>11 cam.</p> <p>12 Q. And why is it that no one's ever asked him why</p> <p>13 he didn't turn the pen camera over?</p> <p>14 A. Well, in the administrative review if -- if the</p> <p>15 department wanted to pursue that as a policy</p> <p>16 question, that would have been the appropriate</p> <p>17 time to ask that question.</p> <p>18 I haven't seen the administrative review</p> <p>19 that was done on the force, so I can't answer</p> <p>20 any questions about what questions were asked</p> <p>21 and what questions were not asked. But I</p> <p>22 believe that that is a policy question that</p> <p>23 would better have been addressed there.</p> <p>24 Q. As the -- as your current role as captain in</p> <p>25 charge of criminal investigations do you not</p>
<p>55</p> <p>1 that he had allegedly committed or potentially</p> <p>2 committed, that you would not make efforts to</p> <p>3 secure the recording device? Is that what</p> <p>4 you're telling me?</p> <p>5 MS. FUNDINGSLAND: Objection,</p> <p>6 argumentative.</p> <p>7 THE WITNESS: It depends on the</p> <p>8 circumstances. But not -- not in every case</p> <p>9 would we go out and seize a system if we had the</p> <p>10 video recording from it.</p> <p>11 And, in fact, in almost no cases do we seize</p> <p>12 an entire recording system.</p> <p>13 BY MR. STORMS:</p> <p>14 Q. You're -- you're just --</p> <p>15 A. We've never had a case -- we've never had a case</p> <p>16 under the circumstance you described.</p> <p>17 This is the only case I'm aware of that</p> <p>18 we've ever had where someone involved in a</p> <p>19 critical incident or another homicide, for that</p> <p>20 matter, has ever had a personal recording device</p> <p>21 that captured the incident.</p> <p>22 Under ideal circumstances we would have</p> <p>23 known about that right at the time of the</p> <p>24 incident.</p> <p>25 I can't tell you why Officer Callahan didn't</p>	<p>57</p> <p>1 have the authority to go and ask that question</p> <p>2 right now if you want to?</p> <p>3 A. To -- to call officer -- to ask Officer Callahan</p> <p>4 to come in and make a voluntary statement and</p> <p>5 answer that question?</p> <p>6 Q. Yes.</p> <p>7 A. We could ask him to do that, but I wouldn't.</p> <p>8 Q. Why?</p> <p>9 A. Because I don't believe it was material to the</p> <p>10 use-of-force incident.</p> <p>11 Q. You don't believe that it was material as to</p> <p>12 whether or not he had professionally handled</p> <p>13 evidence properly or legally handled evidence</p> <p>14 properly? It's not material to that?</p> <p>15 A. What you're suggesting is that there should have</p> <p>16 been criminal charges brought.</p> <p>17 I don't believe that there's probable cause</p> <p>18 to show that he intended to withhold that.</p> <p>19 It was turned over at the first meeting</p> <p>20 between Officer Callahan, his attorney and the</p> <p>21 investigators for the purpose of questioning</p> <p>22 Officer Callahan.</p> <p>23 I don't believe that it would be possible to</p> <p>24 show that he intended to withhold that piece of</p> <p>25 evidence because it was turned over at the first</p>

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58	<p>1 time that he met with investigators for</p> <p>2 questioning.</p> <p>3 Q. Well, it was obvious he intended not to turn it</p> <p>4 over at the conclusion of the incident; right?</p> <p>5 A. He did not turn it over at the time of the</p> <p>6 incident.</p> <p>7 Q. And you know he took the...</p> <p>8 Are you aware of the fact that he took the</p> <p>9 video home and watched it with his wife before</p> <p>10 anyone in the MPD had seen it?</p> <p>11 A. I had heard that.</p> <p>12 Q. That's not proper, is it?</p> <p>13 A. If he had -- if he had not watched it then --</p> <p>14 Q. Is that proper?</p> <p>15 A. To watch the video before you give a statement?</p> <p>16 Q. No. So is it proper for him to go home and</p> <p>17 download evidence of a critical incident and a</p> <p>18 homicide and watch it with his wife before</p> <p>19 divulging it to MPD?</p> <p>20 MS. FUNDINGSLAND: Objection, compound</p> <p>21 and argumentative.</p> <p>22 THE WITNESS: I -- I have already</p> <p>23 answered the question by saying that the ideal</p> <p>24 thing would have been to have collected that</p> <p>25 video from him right at the time.</p>	60	<p>1 circumstances we would have known about that</p> <p>2 pen cam at the time of the incident.</p> <p>3 Q. Because he would have told you?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. But he didn't. I can't answer the question</p> <p>7 about why, but he turned it over when he met</p> <p>8 with investigators, he and his attorney, at the</p> <p>9 time that he was questioned.</p> <p>10 Q. Do you know that he took that pen camera video</p> <p>11 and downloaded it onto his own personal</p> <p>12 computer?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know that that personal computer has</p> <p>15 editing equipment on it?</p> <p>16 A. I don't know what he has on his personal</p> <p>17 computer.</p> <p>18 Q. Why didn't you find that out?</p> <p>19 A. Because this was -- this video was only one</p> <p>20 piece. It was consistent with the other</p> <p>21 evidence in this case.</p> <p>22 There were no open questions about this</p> <p>23 video.</p> <p>24 Q. Well, how do you know that before he turned on</p> <p>25 the camera he wasn't calling David Smith racial</p>
59	<p>1 If he had wanted to watch the video before</p> <p>2 making his statement, we would have permitted</p> <p>3 that.</p> <p>4 It's part of our policy that when we have</p> <p>5 video that's captured, like squad video, for</p> <p>6 example, we allow officers to review that before</p> <p>7 they make their statement.</p> <p>8 So I do not think that there was a problem</p> <p>9 with him reviewing the video before he made the</p> <p>10 statement. I wish it had occurred under</p> <p>11 different circumstances.</p> <p>12 BY MR. STORMS:</p> <p>13 Q. So when you say under ideal circumstances, do</p> <p>14 you mean that had he had done what he was</p> <p>15 supposed to do, it would have been him following</p> <p>16 the law and his duty, as opposed to what he</p> <p>17 actually did?</p> <p>18 MS. FUNDINGSLAND: Objection,</p> <p>19 argumentative and asked and answered.</p> <p>20 THE WITNESS: I would not answer the</p> <p>21 question that way. Those are your words, not</p> <p>22 mine.</p> <p>23 BY MR. STORMS:</p> <p>24 Q. Well, how would you answer the question?</p> <p>25 A. The way I did. I would say under ideal</p>	61	<p>1 words? Or racial -- how do you know that?</p> <p>2 A. I don't know that. But I also know that there</p> <p>3 was no suggestion of that from any of the</p> <p>4 witness statements.</p> <p>5 And, in fact, the witness statements several</p> <p>6 times mentioned how professional the officers</p> <p>7 were. They mentioned that they were trying to</p> <p>8 be friendly with him. That they said something</p> <p>9 like, "Hey, come on over here, we want to talk</p> <p>10 to you."</p> <p>11 The witnesses did not provide any evidence</p> <p>12 that they were using any racial slurs or any</p> <p>13 other kinds of inappropriate language.</p> <p>14 Q. Do you know how close the witness was standing</p> <p>15 to them at the time?</p> <p>16 A. I believe that in his statement the witness who</p> <p>17 was not an employee of the Y said that he was</p> <p>18 about 20 feet away.</p> <p>19 Q. And did you know that that witness had</p> <p>20 previously worked for a police department?</p> <p>21 A. Yes, I saw that in his statement.</p> <p>22 Q. And so that wouldn't give you some reason to be</p> <p>23 concerned about whether or not that witness</p> <p>24 could potentially be biased in terms of the</p> <p>25 statement he gave?</p>

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<p>62</p> <p>1 MS. FUNDINGSLAND: Objection, 2 argumentative. 3 MR. BENNETT: He said he was biased. 4 THE WITNESS: He said that he -- that he 5 had worked for a police -- 6 MR. STORMS: Answer -- 7 THE WITNESS: -- agency in the past. 8 MR. STORMS: -- my question. 9 BY MR. STORMS: 10 Q. I'm asking you whether or not that would give 11 you cause to believe that he could have been a 12 biased witness? 13 MS. FUNDINGSLAND: Same objection. 14 THE WITNESS: No. Because I read all of 15 the witness statements. I didn't read his 16 statement in a vacuum, any more than I looked at 17 the pen camera video in a vacuum, any more than 18 the investigators or the county attorney's 19 office looked at any of these items in a vacuum. 20 I looked at them as part of the entire case. 21 Q. Well... 22 MR. BENNETT: (Sotto voce comment.) 23 BY MR. STORMS: 24 Q. Any videotaped evidence that could have been on 25 the pen camera related to this incident that</p>	<p>64</p> <p>1 know from a video forensic examiner perspective 2 what exactly they would be able to tell us. 3 Q. And you didn't do it in this case because 4 Officer Callahan is a police officer and not to 5 use the word you had put before, but a 6 gang-banger. 7 If this had been a gang-banger maybe you 8 would have taken that step? 9 A. If the county attorney's office had requested 10 that, we would have taken that step. 11 Q. I'm not asking about the county attorney. I'm 12 asking about what MPD decides to do. 13 So if this had been some gang-banger who had 14 this video device and turned it over would you 15 have made that forensic effort? 16 A. If there had been open questions about it, yes, 17 we would have. 18 Q. And the fact that he initially concealed this 19 pen camera from investigators, that doesn't 20 create open questions to you in terms of the 21 veracity of the evidence? 22 A. No. Because he turned it over at the first 23 meeting between his attorney, him and the 24 investigators at the time that they were going 25 to be questioned.</p>
<p>63</p> <p>1 wasn't disclosed, that could have been important 2 evidence, couldn't it have been? 3 A. Important evidence? 4 Q. For -- related to this case, yeah. 5 A. If -- if there were other video? 6 Q. Yes. 7 A. Um, sure. 8 Q. And if there were other video where they were 9 calling him racial slurs, that would be a big 10 problem, wouldn't it? 11 A. It would be a big problem, but -- 12 Q. Now if you -- 13 A. -- there's no reason to think that that exists. 14 Q. Well, you -- if you would have done the forensic 15 review or had the department do the forensic 16 review you could say with certainty today that 17 that didn't happen, couldn't you? 18 A. If we had -- if we had asked for a forensic 19 evaluation of the video, hopefully they would be 20 able to tell us if the video appeared to have 21 been started in the middle. 22 I'm not a forensic examiner so I don't know 23 for sure whether they would be able to 24 definitively tell us, "This was the actual 25 starting point." So I don't -- I guess I don't</p>	<p>65</p> <p>1 MR. BENNETT: (Sotto voce comment.) 2 BY MR. STORMS: 3 Q. Do you tend to -- is it good homicide protocol 4 to wait six days to get critical video evidence? 5 Is that how you prefer to conduct your 6 investigations? 7 MS. FUNDINGSLAND: Objection, 8 argumentative. 9 THE WITNESS: No, we would have 10 preferred to have it at the time. 11 BY MR. STORMS: 12 Q. And he should know that as a police officer, 13 shouldn't he? 14 A. Yes, he would know that as a police officer. 15 Q. I mean there's no reason for him to think, "The 16 right thing for me to do here as a 17 police officer is to take this video home with 18 me," is there? 19 A. I don't know what he was thinking. 20 Q. Does MPD train that that's okay? 21 A. But... No, of course not. 22 He would have known that we would have 23 wanted to collect as much evidence as possible. 24 I don't know what he was thinking at that 25 point.</p>

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<p>66</p> <p>1 Q. And you -- in terms of evidence related to 2 whether or not this was intentional, I'm showing 3 you Exhibit 50-A. Have you seen that before? 4 A. No. 5 Q. It's a picture that was taken from the 6 disposable camera that we've taken the liberty 7 to blow up. 8 And what do you see in his right breast 9 pocket? 10 MR. BENNETT: Left. 11 BY MR. STORMS: 12 Q. Or left breast pocket? 13 A. The pen cam. 14 Q. Okay. 15 MR. BENNETT: 72. 16 MR. STORMS: Yeah. 17 BY MR. STORMS: 18 Q. I'm showing you what's been marked as 19 Exhibit 72. Have you seen this before? 20 MS. FUNDINGSLAND: She's already stated 21 she never saw any photos, counsel. 22 THE WITNESS: No, I never saw the 23 pictures. 24 MR. BENNETT: She's seeing it now. 25 BY MR. STORMS:</p>	<p>68</p> <p>1 is sitting in his pocket? Is that what you're 2 hoping for? Or -- 3 A. I don't -- I don't know what he was thinking, 4 but I don't know that I would characterize this 5 pen cam as the most critical piece of evidence 6 in the case. 7 Q. Are you aware of the fact that Dr. Baker said 8 that that was the evidence that allowed him to 9 conclude that this was a homicide? 10 A. I didn't know that Dr. Baker said that. But I 11 would say what I have said before--this pen cam 12 video was one pieces of evidence in this case, 13 along with video from the Y, the Taser cam, the 14 witness statements, the officer statements, all 15 the other things that were gathered. 16 This piece of video -- I wish we would have 17 had it at the time. That would have been the 18 ideal, to have it turned over immediately. But 19 it wasn't the only piece of evidence in this 20 case. 21 Q. Well, it was the clearest video evidence, wasn't 22 it? 23 A. Yes. 24 Q. It -- 25 A. It's good quality.</p>
<p>67</p> <p>1 Q. Now when you -- 2 MS. FUNDINGSLAND: Excuse me? 3 MR. BENNETT: She's seeing it now. 4 That's -- 5 MS. FUNDINGSLAND: Well, she'd already 6 said she had never seen the pictures. All 7 right? 8 BY MR. STORMS: 9 Q. When you look in the left breast pocket do you 10 see the pen camera visibly? 11 A. No. I see the bulge, but I don't see it 12 protruding from the pocket. 13 Q. It looks like the pen camera has been shoved 14 into the pocket, doesn't it? 15 A. Yes, it does. 16 Q. Okay. Now that would evidence to you some 17 intent to not disclose the pen camera, wouldn't 18 it? 19 A. Or maybe he just put it back in his pocket and 20 instead of the clip going on the outside it went 21 all the way in. 22 Q. And -- and so you would think that in the course 23 of everyone taking pictures of everything else 24 on his person, it just wouldn't occur to him 25 that maybe the most critical piece of evidence</p>	<p>69</p> <p>1 Q. -- captured -- it captured almost the entire 2 event? 3 A. Yes. 4 Q. We don't know how much of the event because no 5 one's ever found out? 6 A. But like you just said, nearly the entire thing. 7 Q. Nearly the entire thing. 8 And how -- so how was that not the most 9 critical piece of evidence that -- that the MPD 10 came in possession of? 11 A. It was -- it was an important piece of evidence, 12 but I wouldn't have wanted to do this 13 investigation without all of the pieces of 14 evidence. 15 I mean certainly in all of our 16 investigations, you know, this one was great. 17 We had -- 18 Q. You haven't answered my question. 19 So why was it not the most important piece 20 of evidence? What was more important than the 21 pen camera? How about that. What piece of 22 evidence was more important than the pen camera? 23 A. Well, I would say that there were things that 24 were equally as important as the pen camera. 25 The statement from the 13-year-old boy</p>

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<p>1 who -- you know, his encounter with David 2 Smith -- 3 MR. BENNETT: What does that have to do 4 with -- 5 THE WITNESS: -- was an extremely 6 important piece of information because it 7 explained to us, you know, how this incident 8 started, what circumstances were like at the Y 9 before the officers even arrived, along with the 10 statement from the manager on duty. 11 The uninvolved, non-employee witness... 12 I mean we had more statements and more video 13 on this case than we do in nearly any other 14 critical incident investigation I've seen. All 15 of those pieces are critical. 16 But the -- the pen camera video was a great 17 piece of evidence. But to suggest that it was 18 the only thing we had in this case and that 19 somehow if we hadn't had that piece of video we 20 would have nothing, would be false. 21 BY MR. STORMS: 22 Q. Well, without that video how would we know that 23 Gorman kneeled on Smith's back for 4-1/2 24 minutes? 25 A. Well, we would have known from their statements.</p>	<p>1 Q. Well, and are you aware of the fact that the 2 medical examiner stated that his knee was 3 between his scapulae? Are you aware of that? 4 A. No, I -- I'm not aware of that. 5 MR. BENNETT: (Sotto voce comment.) 6 BY MR. STORMS: 7 Q. And the reason that -- the reason that Gorman -- 8 that we don't know how long he kneeled on his 9 back is that your investigators never asked that 10 question, did they? 11 A. They asked the questions about where they were, 12 what techniques they were using, but they didn't 13 ask how long they were there. And I wouldn't 14 have expected the officers to be able to 15 precisely answer the question of how long they 16 were there. 17 Q. Well, and without the pen camera we would never 18 know, would we? 19 A. No, we wouldn't have nearly as precise -- 20 Q. And -- 21 A. -- an estimate. 22 Q. And Gorman could have said it was 30 seconds and 23 we would have no way to prove otherwise, would 24 we, without the pen camera? 25 A. No. We know the overall time of the incident,</p>
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<p>1 Yet we wouldn't have known -- we wouldn't have 2 known the length of time. However, we would 3 have known because Officer Gorman says he was 4 using the technique of putting his knee on David 5 Smith's shoulder at the conclusion. 6 Both of the officers described themselves as 7 being in the positions that they were in. 8 Q. Well, Gorman says he put his left knee on 9 Smith's back; right? 10 MR. BENNETT: On his right shoulder. 11 THE WITNESS: He says he put it -- 12 MR. STORMS: On his right shoulder. 13 THE WITNESS: He put his knee on his 14 shoulder. 15 BY MR. STORMS: 16 Q. And in the video it clearly shows at times 17 Gorman has his right knee on David Smith's back, 18 doesn't it? 19 A. Well, it's been a while since I've seen the 20 video and whether it's his right knee or his 21 left knee... He puts himself in that position, 22 using that technique of -- of kneeling on his 23 shoulder or upper back. 24 MR. BENNETT: (Sotto voce comment.) 25 BY MR. STORMS:</p>	<p>1 so we could certainly make some estimates, but 2 we wouldn't be nearly as precise without the 3 pen camera video. 4 Q. So... And the question of how long they 5 continued to kneel or sit on David Smith's back, 6 that's very relevant to the inquiry of 7 mechanical asphyxia, isn't it? 8 MS. FUNDINGSLAND: Object to the form of 9 the question. 10 THE WITNESS: Dr. Baker would be the 11 best person to answer questions about that. But 12 obviously, yes, the position that they had him 13 in was relevant to the mechanical asphyxia, 14 which was, you know, one of the contributing 15 factors that Dr. Baker -- 16 MR. BENNETT: It was the cause of death. 17 THE WITNESS: -- concluded was involved. 18 MR. BENNETT: Cause of death, not a 19 contributing factor. 20 MS. FUNDINGSLAND: Excuse me. 21 Who's -- 22 MR. BENNETT: Well, I mean -- 23 MS. FUNDINGSLAND: -- testifying -- 24 MR. BENNETT: -- it's just bullshit. 25 MS. FUNDINGSLAND: -- here?</p>

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<p>1 MR. BENNETT: It's -- it's --  2 MS. FUNDINGSLAND: Well, why --  3 MR. BENNETT: -- ridiculous.  4 MS. FUNDINGSLAND: -- don't you swear  5 yourself in, Mr. Bennett, then? Okay?  6 MR. BENNETT: These answers are --  7 MS. FUNDINGSLAND: Well, --  8 MR. BENNETT: -- ridiculous.  9 MS. FUNDINGSLAND: -- I don't --  10 MR. BENNETT: I'm tired of them.  11 MS. FUNDINGSLAND: -- care if you don't  12 like the answers that you're getting.  13 MR. BENNETT: Okay.  14 MS. FUNDINGSLAND: Okay?  15 MR. BENNETT: Let's -- let's go on.  16 MS. FUNDINGSLAND: Please.  17 MR. BENNETT: But that's --  18 MS. FUNDINGSLAND: Mr. --  19 MR. BENNETT: -- that's just not true.  20 MS. FUNDINGSLAND: Mr. Bennett, just let  21 the person answer the question. Otherwise you  22 don't need to depose her at all. Okay? You can  23 just get up there and testify.  24 MR. BENNETT: Well, --  25 MS. FUNDINGSLAND: So --</p>	<p>1 You'll give your final argument some day.  2 MR. BENNETT: You betcha, I will.  3 BY MR. STORMS:  4 Q. Now you talk about not being a doctor in terms  5 of understanding the length of time, you know,  6 there was kneeling on David Smith's back.  7 Minneapolis police officers, along with all  8 other police officers, have been trained for a  9 long period of time that you're not supposed to  10 continue to kneel on the backs of subjects for a  11 long period of time; isn't that right?  12 A. Yes. We train officers to turn them over into  13 the recovery position as soon as practical.  14 Q. And that was long before this case, wasn't it,  15 that that training has been provided?  16 A. Yes. I don't know for how long and in -- and in  17 what context, but certainly it's been part of  18 our maximal restraint policy for many years.  19 Q. And it's something that you would -- that you  20 train to do not only in maximal restraint, but  21 in any situation where you have a handcuffed  22 individual in the prone position; isn't that  23 right?  24 A. Yes. We encourage officers to turn them over as  25 soon as practical onto their side.</p>
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<p>1 MR. BENNETT: -- I'd --  2 MS. FUNDINGSLAND: -- either let her --  3 MR. BENNETT: -- testify to the truth.  4 MS. FUNDINGSLAND: Either let her answer  5 or don't.  6 MR. BENNETT: Okay. She's sworn to tell  7 the truth.  8 MR. STORMS: Well, --  9 MS. FUNDINGSLAND: Don't start with me.  10 MR. BENNETT: Start with her.  11 MS. FUNDINGSLAND: And don't do it.  12 You keep that up and this deposition will be  13 over.  14 MR. BENNETT: Yeah. It's over now.  15 MS. FUNDINGSLAND: Just because you  16 don't like what she's saying --  17 MR. BENNETT: Oh, --  18 MS. FUNDINGSLAND: -- doesn't mean she --  19 MR. BENNETT: -- I do like what she's  20 saying. Don't get me wrong. Because it's as --  21 MS. FUNDINGSLAND: Well, --  22 MR. BENNETT: -- silly as anything I've  23 ever heard.  24 MS. FUNDINGSLAND: -- just let her  25 answer the questions.</p>	<p>1 Q. Do you know if whether or not that was part of  2 the grand jury presentation in terms of what  3 officers have been trained on?  4 A. I don't know what the county attorney's office  5 presented at the grand jury.  6 The training records certainly were part of  7 the case file, but I don't know whether that was  8 presented.  9 Q. Do you know why your homicide investigators  10 never asked Smith and -- or Gorman and Callahan  11 why they did not put Smith on his side?  12 A. No, I don't know why they didn't ask.  13 Q. As you sit here today do you know why Callahan  14 and Gorman did not put Smith on his side?  15 A. I know what they said in their statements.  16 That, you know, they were -- they were  17 recovering from the struggle.  18 That they were breathing heavily.  19 That they were feeling -- one of them was  20 feeling light-headed.  21 And at one point Officer Gorman went to look  22 for the manager on duty from the Y. He wanted  23 to ascertain that they were going to be able to  24 get the medical people up in the elevator.  25 So, you know, I know how they explained what</p>

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78	<p>1 they were doing at that time.</p> <p>2 Q. Did anyone ever...</p> <p>3 (Sotto voce conversation.)</p> <p>4 BY MR. STORMS:</p> <p>5 Q. Have you watched the --</p> <p>6 MR. BENNETT: Just ask it that way.</p> <p>7 MR. STORMS: Yeah.</p> <p>8 BY MR. STORMS:</p> <p>9 Q. Are those statements belied by the pen camera</p> <p>10 video?</p> <p>11 MR. BENNETT: Yes or no.</p> <p>12 BY MR. STORMS:</p> <p>13 Q. Yes or no?</p> <p>14 MS. FUNDINGSLAND: What statements?</p> <p>15 I'm sorry.</p> <p>16 MR. BENNETT: That she just made.</p> <p>17 BY MR. STORMS:</p> <p>18 Q. The statements in terms of what the officers...</p> <p>19 In terms of what the officers said in their</p> <p>20 statements about what they were doing, in terms</p> <p>21 about recovering and things of that nature, is</p> <p>22 that supported by the pen camera video?</p> <p>23 A. Yes, as far as I know.</p> <p>24 Q. At times when Gorman was kneeling on Smith's</p> <p>25 back and Callahan was sitting on Smith's</p>	80	<p>1 Q. How come homicide never asked these officers why</p> <p>2 Smith was not put into a recovery position?</p> <p>3 MS. FUNDINGSLAND: Objection, asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: The officers explained</p> <p>6 what they were doing and why they were doing it.</p> <p>7 BY MR. STORMS:</p> <p>8 Q. Were they asked that question?</p> <p>9 A. No, they were not.</p> <p>10 Q. Do you know why they weren't asked that</p> <p>11 question?</p> <p>12 MS. FUNDINGSLAND: Objection, asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: No, I don't know why the</p> <p>15 homicide investigators chose to ask one question</p> <p>16 versus another, but they were asked to describe</p> <p>17 their course of action, what they were doing and</p> <p>18 why they were doing it and that's what they gave</p> <p>19 in their statements.</p> <p>20 MR. STORMS: Okay.</p> <p>21 BY MR. STORMS:</p> <p>22 Q. Are you aware that Dr. Baker testified and</p> <p>23 determined that they continued to kneel on David</p> <p>24 Smith's back long after he had ceased breathing?</p> <p>25 A. Yes.</p>
79	<p>1 buttocks and upper thighs were they not talking</p> <p>2 about other things such as what they could</p> <p>3 charge him with and what a tough fight that was?</p> <p>4 A. Yes, they were having some conversations.</p> <p>5 Q. That shows an ability to breathe certainly,</p> <p>6 doesn't it?</p> <p>7 A. Right. But I -- but I believe, as I recall from</p> <p>8 viewing it, that you can also hear that they</p> <p>9 were breathing heavily, panting and, you know,</p> <p>10 clearly recovering from the struggle.</p> <p>11 Q. So is it appropriate to mechanically asphyxiate</p> <p>12 a subject while the officers catch their breath?</p> <p>13 A. No.</p> <p>14 Q. Is that appropriate?</p> <p>15 MS. FUNDINGSLAND: Object to the form of</p> <p>16 the question. And argumentative.</p> <p>17 THE WITNESS: No.</p> <p>18 MR. STORMS: Okay.</p> <p>19 BY MR. STORMS:</p> <p>20 Q. Officers are -- your officers have been well</p> <p>21 trained that they should put them into a</p> <p>22 recovery position; correct?</p> <p>23 MS. FUNDINGSLAND: Objection, asked and</p> <p>24 answered.</p> <p>25 BY MR. STORMS:</p>	81	<p>1 Q. Okay. That's problematic, isn't it?</p> <p>2 A. Yes.</p> <p>3 Q. You never want to kneel on someone's back who is</p> <p>4 no longer breathing? There's no police purpose</p> <p>5 there, is there?</p> <p>6 A. No.</p> <p>7 Q. And similarly, when a subject gives up and is</p> <p>8 complying, there's no need to continue kneeling</p> <p>9 on a subject's back at that point either, is</p> <p>10 there?</p> <p>11 A. Correct.</p> <p>12 Q. It's the reason to lessen force?</p> <p>13 A. Yes.</p> <p>14 Q. Are -- are you aware of the fact that Callahan</p> <p>15 in his statement said that after the handcuffs</p> <p>16 had been applied Smith gave up and was</p> <p>17 complying?</p> <p>18 A. Yes.</p> <p>19 Q. Why did homicide not ask -- are you aware of why</p> <p>20 homicide didn't ask why Smith -- or why Gorman</p> <p>21 and Callahan continued to kneel on Smith's back</p> <p>22 for 4-1/2 minutes after he had complied?</p> <p>23 A. No. Like I said before, why they asked</p> <p>24 particular questions I can't answer that. But</p> <p>25 they asked for their course of what they did and</p>

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<p style="text-align: right;">82</p> <p>1 their thoughts about why they did it.</p> <p>2 Q. If they were conducting a</p> <p>3 professionally-competent investigation should</p> <p>4 they have asked that question?</p> <p>5 MS. FUNDINGSLAND: I'm going to object</p> <p>6 to the form of the question.</p> <p>7 THE WITNESS: I think that that's one</p> <p>8 question that could have been asked.</p> <p>9 I think they asked for the officers to</p> <p>10 describe what they did, their course of conduct</p> <p>11 during this incident.</p> <p>12 MR. BENNETT: (Sotto voce comment.)</p> <p>13 BY MR. STORMS:</p> <p>14 Q. Is the answer yes or no?</p> <p>15 A. Would you ask the question again? And I'll give</p> <p>16 you the yes or no answer.</p> <p>17 MR. STORMS: Can you please read back my</p> <p>18 question?</p> <p>19 (The following was read back by the</p> <p>20 court reporter:</p> <p>21 "Q. If they were conducting a professionally-</p> <p>22 competent investigation should they have asked</p> <p>23 that question?"</p> <p>24 THE WITNESS: Yes, that's one question</p> <p>25 that could have been asked.</p> <p>BY MR. STORMS:</p>	<p style="text-align: right;">84</p> <p>1 Q. And to monitor their breathing and</p> <p>2 consciousness?</p> <p>3 A. Yes.</p> <p>4 Q. So would a professionally-competent</p> <p>5 investigation have included asking Callahan and</p> <p>6 Gorman why they did nothing to check his</p> <p>7 breathing or health status for a period of</p> <p>8 6-1/2 minutes?</p> <p>9 A. You know, the -- the suggestions that the</p> <p>10 training and policy were violated would have</p> <p>11 been a good question for the force review, you</p> <p>12 know, particularly focusing on those issues of</p> <p>13 training and policy.</p> <p>14 The homicide investigation, you know, was</p> <p>15 looking at the use of force itself and they were</p> <p>16 very focused on the incidents that led up to the</p> <p>17 use of force and the use of force itself and --</p> <p>18 and not on the issues that occurred after the</p> <p>19 use of force was completely finished.</p> <p>20 Q. Well, if an officer fails to follow policy and</p> <p>21 fails to comply with the guidelines of the</p> <p>22 4th Amendment wouldn't that be relevant to the</p> <p>23 question of whether or not a negligent homicide</p> <p>24 had occurred, for example, or involuntary</p> <p>25 manslaughter?</p>
<p style="text-align: right;">83</p> <p>1 Q. And if they were conducting a</p> <p>2 professionally-competent investigation they</p> <p>3 should have asked why no one attended to Smith's</p> <p>4 breathing for a period of 6-1/2 minutes?</p> <p>5 A. (Pausing.)</p> <p>6 Q. Yes?</p> <p>7 A. The officers provided first aid. It's clear</p> <p>8 from watching the video the officers provided</p> <p>9 first aid. When they realized that David Smith</p> <p>10 was in distress they provided first aid.</p> <p>11 Q. Are you aware of the fact that they did not</p> <p>12 check either his breathing or pulse for a period</p> <p>13 of 6-1/2 minutes after handcuffs were applied?</p> <p>14 A. I hadn't measured the length of time, but yes, I</p> <p>15 knew that there was a time period where they --</p> <p>16 they didn't check his breathing or pulse, they</p> <p>17 didn't realize he was in distress and so they</p> <p>18 didn't start first aid yet.</p> <p>19 Q. Under the training that's been provided by the</p> <p>20 Minneapolis Police Department is that an</p> <p>21 acceptable period of time to maintain someone in</p> <p>22 a prone position without checking either their</p> <p>23 breathing or consciousness?</p> <p>24 A. No. We train officers to turn them over into</p> <p>25 the recovery position as soon as practical.</p>	<p style="text-align: right;">85</p> <p>1 A. Well, in this case I think that, you know,</p> <p>2 there's clearly an effort made--they intended to</p> <p>3 provide first aid. You know, there's no --</p> <p>4 there's no evidence in the case that, you know,</p> <p>5 they willfully deprived him of, you know,</p> <p>6 medical attention once they realized he was in</p> <p>7 distress.</p> <p>8 Q. Well, if I -- I can't commit involuntary</p> <p>9 manslaughter? I can't accidentally or</p> <p>10 negligently kill someone and then provide them</p> <p>11 with CPR, but still be criminally liable for</p> <p>12 negligent homicide? Is that what you're telling</p> <p>13 me?</p> <p>14 A. I suppose.</p> <p>15 I haven't seen a case like that charged out.</p> <p>16 Q. Do you need intent for negligent homicide?</p> <p>17 A. No.</p> <p>18 Q. Okay. So the question of intent is really kind</p> <p>19 of irrelevant as to whether or not a negligent</p> <p>20 homicide occurred in this case; right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. I mean kneeling on Smith's back by Gorman</p> <p>23 and sitting on his buttocks by Callahan, that</p> <p>24 was a use of force, wasn't it?</p> <p>25 A. It was -- it was not a use of force in terms of</p>


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<p style="text-align: right;">86</p> <p>1 the use of force like a takedown technique.</p> <p>2 They were restraining him, yes.</p> <p>3 Q. Well, all right.</p> <p>4 (Sotto voce conversation.)</p> <p>5 BY MR. STORMS:</p> <p>6 Q. Are you aware of the fact that restraining</p> <p>7 someone is -- falls within the definition of</p> <p>8 force under MPD policy?</p> <p>9 A. Yes. But I'm clarifying that -- that the use</p> <p>10 of -- the use of force in this case involved a</p> <p>11 number of different aspects.</p> <p>12 They were restraining him at that point, but</p> <p>13 there wasn't a use of force at that point. Like</p> <p>14 the Taser use of force had already occurred.</p> <p>15 There was no additional, you know, arm bar</p> <p>16 techniques. There were no pressure point</p> <p>17 techniques that were being applied.</p> <p>18 Q. Well, they struck him in the head while he was</p> <p>19 in prone position, didn't they?</p> <p>20 A. Yes.</p> <p>21 Q. Are you supposed to hit handcuffed individuals</p> <p>22 in the head?</p> <p>23 A. They were cuffing him in the head with an open</p> <p>24 hand to discourage him from continuing to</p> <p>25 resist.</p>	<p style="text-align: right;">88</p> <p>1 until they die of mechanical asphyxia?</p> <p>2 MS. FUNDINGSLAND: Object to the form of</p> <p>3 the question.</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. STORMS: Okay.</p> <p>6 BY MR. STORMS:</p> <p>7 Q. And similarly officers have an obligation under</p> <p>8 the 4th Amendment when they -- when they arrest</p> <p>9 someone or otherwise maintain someone in</p> <p>10 custody, they have an obligation to ensure that</p> <p>11 that person remains in good health?</p> <p>12 A. Yes.</p> <p>13 Q. Continues to breathe?</p> <p>14 A. Yes.</p> <p>15 Q. And so officers have an obligation under the</p> <p>16 4th Amendment to, for example, continue to -- to</p> <p>17 continue monitoring the breathing of a suspect</p> <p>18 that they've arrested?</p> <p>19 A. Yes.</p> <p>20 Q. That didn't happen in this case?</p> <p>21 A. No. There was a significant gap of time in</p> <p>22 which that did not happen.</p> <p>23 Q. Okay. So wouldn't having answers to those</p> <p>24 questions inform any kind of legitimate inquiry</p> <p>25 as to whether or not a negligent homicide</p>
<p style="text-align: right;">87</p> <p>1 Q. And that's appropriate?</p> <p>2 A. They were exonerated in the use-of-force review.</p> <p>3 Q. You don't know what information was presented at</p> <p>4 the use-of-force review? You weren't there;</p> <p>5 right?</p> <p>6 A. No, I haven't seen the use-of-force review.</p> <p>7 Q. So back to my point.</p> <p>8 Kneeling on his back and sitting on his</p> <p>9 buttocks, those are uses of force, aren't they?</p> <p>10 A. Yes.</p> <p>11 Q. And they're governed by the 4th Amendment;</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now continuing to kneel on someone's back</p> <p>15 until they mechanically asphyxiate, that's not</p> <p>16 proper police training, is it?</p> <p>17 A. No.</p> <p>18 MS. FUNDINGSLAND: Object to the form of</p> <p>19 the question.</p> <p>20 BY MR. STORMS:</p> <p>21 Q. And that wouldn't fall within proper conduct</p> <p>22 under the 4th Amendment either, would it?</p> <p>23 A. No. We certainly don't train people...</p> <p>24 Q. And the 4th Amendment certainly doesn't allow</p> <p>25 for police officers to kneel on someone's back</p>	<p style="text-align: right;">89</p> <p>1 occurred in this case?</p> <p>2 A. Well, --</p> <p>3 MS. FUNDINGSLAND: Objection, asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: The -- the witness</p> <p>6 statements, the videos, all of them that are</p> <p>7 available, clearly show the time period. They</p> <p>8 show the events that occurred.</p> <p>9 BY MR. STORMS:</p> <p>10 Q. And they show that they kneeled on his back for</p> <p>11 4-1/2 minutes?</p> <p>12 A. Yes.</p> <p>13 Q. Not good; right?</p> <p>14 A. No. Not good.</p> <p>15 Q. Right.</p> <p>16 A. There was no question -- there was no question</p> <p>17 that that had happened.</p> <p>18 Q. Okay. And so why would that be okay then? Why</p> <p>19 would that not be a policy violation? You --</p> <p>20 you seem to have informed me that that's against</p> <p>21 training, it's against policy, it's against what</p> <p>22 officers know.</p> <p>23 So aside from a policy violation why</p> <p>24 wouldn't that be a negligent homicide?</p> <p>25 A. Well, that's certainly something that the</p>

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90	<p>1 grand jury could have considered. Obviously I</p> <p>2 wasn't present at the grand jury. But the</p> <p>3 grand jury reviewed this case and determined</p> <p>4 that no charges were appropriate. And the only</p> <p>5 one who can answer the question about why is the</p> <p>6 grand jury.</p> <p>7 Q. Do you consider this to be a negligent homicide?</p> <p>8 A. Um... Um... I do not consider this to be a</p> <p>9 negligent homicide because it's been reviewed by</p> <p>10 the authority to determine that --</p> <p>11 Q. I don't care --</p> <p>12 A. -- and determined not to be a negligent</p> <p>13 homicide.</p> <p>14 Q. I don't care about the review. I want to know</p> <p>15 based upon all your training and all your</p> <p>16 education, your work as a police officer,</p> <p>17 whether or not you consider this to be a</p> <p>18 negligent homicide.</p> <p>19 MR. BENNETT: (Sotto voce comment.)</p> <p>20 THE WITNESS: I think that, as you have</p> <p>21 pointed out, there were clearly issues in this</p> <p>22 case where the way we train officers to monitor</p> <p>23 someone's medical condition and breathing, those</p> <p>24 training standards were not upheld.</p> <p>25 I do not believe it rises to the level of</p>	92	<p>1 monitor the health and welfare of subjects,</p> <p>2 that's meant to fulfill the officer's</p> <p>3 requirements under the 4th Amendment, isn't it?</p> <p>4 A. Yes.</p> <p>5 Q. And the same is true for the standards and</p> <p>6 policies and practices with respect to removing</p> <p>7 subjects from a prone position into a recovery</p> <p>8 position?</p> <p>9 A. Yes.</p> <p>10 MR. STORMS: I have no further</p> <p>11 questions.</p> <p>12 MS. FUNDINGSLAND: We'll read and sign.</p> <p>13 VIDEOGRAPHER: This concludes the video</p> <p>14 deposition.</p> <p>15 It is 10:37 A.M.</p> <p>16 (Concluded at 10:37 A.M.)</p> <p>17 * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
91	<p>1 negligent homicide.</p> <p>2 It's not that they made no effort. They</p> <p>3 clearly did not make no effort to be cognizant</p> <p>4 of David Smith's medical condition. There was a</p> <p>5 significant gap. There was a gap that was too</p> <p>6 long, but I do not believe that they -- that</p> <p>7 they were completely negligent of Mr. Smith's</p> <p>8 welfare.</p> <p>9 BY MR. STORMS:</p> <p>10 Q. You believe it was a belated effort?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And you believe that their conduct and the</p> <p>13 efforts they made were contrary to the police</p> <p>14 standards, practices and policies as you</p> <p>15 understand them?</p> <p>16 A. Yes, I do.</p> <p>17 MR. STORMS: Can we go off the record?</p> <p>18 VIDEOGRAPHER: Off the video record at</p> <p>19 10:28 A.M.</p> <p>20 (Recess taken.)</p> <p>21 VIDEOGRAPHER: This is Disc 2.</p> <p>22 We are on the record at 10:36 A.M.</p> <p>23 BY MR. STORMS:</p> <p>24 Q. The training standards and policies and</p> <p>25 practices regarding -- or requiring officers to</p>	93	<p>1 STATE OF MINNESOTA )</p> <p>2 : ss CERTIFICATE</p> <p>3 COUNTY OF WASHINGTON )</p> <p>4 I, Janet D. Winberg, hereby certify</p> <p>5 that I reported the videotaped deposition of</p> <p>6 AMELIA HUFFMAN, on the 31st day of July, 2012,</p> <p>7 in Minneapolis, Minnesota, and that the witness</p> <p>8 was, by me, first duly sworn to tell the truth;</p> <p>9 That the testimony was transcribed by me and is</p> <p>10 a true record of the testimony of the witness;</p> <p>11</p> <p>12 That I am not a relative, or employee, or</p> <p>13 attorney, or counsel of any of the parties; or a</p> <p>14 relative or employee of such attorney or</p> <p>15 counsel;</p> <p>16 That I am not financially interested in the</p> <p>17 action and have no contract with the parties,</p> <p>18 attorneys or persons with an interest in the</p> <p>19 action that affects or has a substantial</p> <p>20 tendency to affect my impartiality;</p> <p>21 That the right to read and sign the transcript</p> <p>22 by the witness was reserved.</p> <p>23</p> <p>24 WITNESS MY HAND AND SEAL THIS 3rd day of August,</p> <p>25 2012.</p> <p>Janet D. Winberg </p> <p>JANET D. WINBERG Registered Professional Reporter Notary Public Washington County, Minnesota.</p>

24 (Pages 90 to 93)

Amelia Huffman  
7/31/2012

<p>1 STATE OF MINNESOTA } 2 : SS CERTIFICATE 3 COUNTY OF WASHINGTON) 4 I, AMELIA HUFFMAN, certify that I have read 5 and examined the typewritten transcript of the 6 deposition taken of me in the matter of Larry E. 7 Smith, et al., vs. Timothy Gorman, et al., on 8 July 31, 2012, consisting of the preceding 9 pages, and find the same to be true and correct 10 (Except as follows): 11 Page Line Correction Reason 12 for Change 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 Dated this _____ day of _____ 24 _____ 25 Reporter: JDW</p>	94
<p>1 EXAMINATION INDEX 2 By Mr. Storms: 3 - 92 3 _____ 4 OBJECTION INDEX 5 Ms. Fundingsland: 42, 51, 53, 54, 55, 58, 59, 62, 65, 6 73, 79, 80, 82, 87, 88, 89 7 _____ 8 EXHIBIT INDEX 9 Exhibit 92: 10 7-800 Tactical Response 11 marked/identified/reviewed.....30 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	95

25 (Pages 94 to 95)